Majlis Perbandaran Pulau Pinang v Syed Ahmed a/l MM Gouse Mohamed

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO P–02–695 OF 1997
GOPAL SRI RAM, AHMAD FAIRUZ AND DENIS ONG JJCA
23 JANUARY 2006

Landlord and Tenant — Licence — Licence coupled with equity — Landlord may give notice to terminate tenancy of land — Whether landlord could evict tenant without satisfying latter's equity — Achieved by payment of reasonable compensation

Constitutional Law — Fundamental liberties — Personal liberty — Violation of art 13(1) Federal Constitution

The appellant was the local authority for Pulau Pinang. The respondent was at all material times the ground tenant of land of which the Majlis Agama Islam, Pulau Pinang was the registered proprietor. The respondent was a successor in title to a portion of a plank house purchased from one Che Yam bte Yahya ('the house'). Pursuant to the Street, Drainage and Building Act 1974 ('the Act'), the appellant demolished the house. The respondent brought an action against the Majlis and the appellant claiming certain declaratory and ancillary relief. As against the appellant, the declaration sought was to the effect that the demolition was unlawful. The High Court refused to grant the remedy but awarded compensation of RM26,000. Hence, this appeal. The issues for the court were: (1) whether the appellant was right in destroying the respondent's house by demolishing it in the purported exercise of its statutory power under the Act; and (2) whether there had been a clear violation of art 13(1) of the Federal Constitution.

Held, dismissing the appeal:

(1) It had been entirely agreed that the respondent was not heard on the matter before his house was demolished. It is a settled principle of law that a person must be heard before he or she is deprived of his or her property. Since the respondent was deprived of his house in breach of the rule in *Cooper v The Wandsworth Board of Works* [1863] 143 ER 414, the respondent was plainly entitled to be compensated for the loss of his house (see para 3).

(2) This was a case where the respondent was deprived of his property otherwise than in accordance with law, namely the requirement of the law that he should have been given an opportunity of being heard. This was a clear violation of art 13(1) of the Federal Constitution. It had been held by courts across the Commonwealth that compensation is payable to a person whose constitutionally guaranteed fundamental right such as the right to life, personal liberty or property is violated (see para 4).

[Bahasa Malaysia summary

Perayu merupakan pihak berkuasa tempatan bagi Pulau Pinang. Responden pada kesemua masa matan merupakan penyewa hartanah yang mana pemilik berdaftarnya adalah Majlis Agama Islam, Pulau Pinang. Responden merupakan pewaris bagi sebahagian dari rumah kayu yang dibeli dari seorang Che Yam bte Yahya ('rumah tersebut'). Di bawah Akta Street, Drainage and Building Act 1974 ('Akta tersebut'), perayu telah merobohkan rumah tersebut. Responden memulakan satu tindakan terhadap Majlis dan perayu menuntut relief perisytiharan dan sampingan. Terhadap perayu, beliau menuntut perisytiharan yang perobohan tersebut adalah tidak sah di sisi undang-undang. Mahkamah enggan memberikan remedi tersebut tetapi memberi award pampasan sebanyak RM26,000. Perayu merayu dan isu-isu dihadapan mahkamah adalah: (1) sama ada tindakan perayu memusnahkan rumah responden secara merobohkannya adalah betul dalam menggunakan kuasa berkanunnya dibawah Akta tersebut; dan (2) sama ada terdapat pelanggaran jelas perkara 13(1) Perlembagaan Persekutuan.

Diputuskan, menolak rayuan:

(1) Ianya dipersetujui oleh pihak-pihak yang responden tidak diberi peluang untuk didengar mengenai perkara ini sebelum rumahnya dirobohkan. Ianya adalah satu ketetapan prinsip undang-undang bahawa seseorang itu perlu didengar sebelum hartanahnya diambil. Oleh kerana hartanah responden telah dirampas melanggari rukun di dalam kes *Cooper v The Wandsworth Board of Works* [1863] 143 ER 414, responden secara jelasnya berhak diberi pampasan untuk kehilangan rumahnya (lihat perenggan 3).

(2) Ini adalah satu kes di mana responden telah dirampas hartanahnya bukan mengikut undang-undang, iaitu keperluan undang-undang yang beliau patut diberi peluang untuk didengar. Ini jelasnya adalah satu pelanggaran perkara 13(1) Perlembagaan Persekutuan. Ianya telah diputuskan di mahkamah di seluruh negara-negara Komanwel bahawa pampasan kena dibayar kepada seseorang yang mana haknya yang dijamin oleh perlembagaan seperti hak untuk kehidupan, kebebasan diri atau harta telah dicabuli (lihat perenggan 4).]

Notes

For the case on licenece coupled with equity, see 9 *Mallal's Digest* (4th Ed, 2002 Reissue) para 1210.

For cases on personal liberty, see 3(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 1840–1845.

Cases referred to

Cooper v The Wandsworth Board of Works [1863] 143 ER 414 (refd)

Cullen v Chief Constable of the Royal Ulster Constabulary (Northern Ireland) [2003] 1 WLR 1763 (refd)

Fose v Minister of Safety and Security [1996] 2 BCLR 232 (refd)

Khew Ah Bah v Hong Ah Mye [1971] 2 MLJ 86 (refd)

Maharaj v Attorney-General of Trinidad & Tobago (No 2) [1979] AC 385 (refd)

Nilabati Bahera v State of Orissa [1993] AIR SC 1960 (refd)
Oag v The Queen [1985] 22 CRR 171 (refd)
Pembangunan Darjat Sdn Bhd v Wong Jie Tshung & Ors [2000] 2 MLJ 212 (refd)
Simpson v Attorney-General [1994] 3 NZLR 667 (refd)

Legislation referred to
Federal Constitution art 13(1)
Street, Drainage and Building Act 1974

A Suppiah (Mohamed Aslam bin Mohamed Mydin with him) (Presgrave & Matthews) for the appellant.
M Thayalan (Thayalan & Associates) for the respondents.

Gopal Sri Ram JCA (delivering judgment of the court):

[1] The facts of this case fall within a narrow compass. The appellant is the local authority in and for the island of Pulau Pinang. The respondent was, at all material times the ground tenant of land of which the Majlis Agama Islam, Pulau Pinang ('the Majlis') is the registered proprietor. The Majlis is not a party to this appeal. The respondent is the successor in title to a portion of a plank house which had been constructed on the land in question. He had purchased that portion from one Che Yam binti Yahya. On 1 October 1986, the appellant pursuant to the power conferred on it by the Street, Drainage and Building Act 1974 ('the Act') demolished the house in question. The respondent brought an action against the Majlis and the appellant claiming certain declaratory and ancillary relief. As against the appellant, the declaration sought was to the effect that the demolition was unlawful. The High Court quite correctly refused to grant that remedy. But it awarded compensation of RM 26,000. And it is against that order that the present appeal is directed.

[2] The type of ownership claim made by the respondent in the present case is not a stranger to our law. If you look at the early cases of ejectment decided by our courts you will find such examples. Land is owned by X and is rented out to Y with permission to construct a building (usually a house) on it. Occupation is permitted so long as the land rent is paid. So you have a situation where the land belongs to one person and the building belongs to another. The law places this type of relationship in the category of a licence coupled with an equity. The landowner may give notice to terminate the tenancy of the land. But he cannot evict the tenant without satisfying the latter's equity. This is usually achieved by the payment of reasonable compensation (see *Khew Ah Bah v Hong Ah Mye* [1971] 2 MLJ 86; *Pembangunan Darjat Sdn Bhd v Wong Jie Tshung & Ors* [2000] 2 MLJ 212.

[3] What the appellant did here was to destroy the respondent's house by demolishing it in the purported exercise of its statutory power under the Act. But as was found by the learned judge with which finding we entirely agree, the respondent was not heard on the matter before his house was demolished. It is a settled principle of public law that a person must be heard before he or she is deprived of his or her property (see *Cooper v The Wandsworth Board of Works* [1863] 143 ER 414 at p 420 where Byles J said '[A]lthough there are no positive words in a statute requiring that

A the party shall be heard, yet the justice of the common law will supply the omission of the legislature'. Since the respondent was deprived of his house in breach of the rule in *Cooper*'s case, the appellant was plainly entitled to be compensated for the loss of his house.

B **[4]** There is another ground, a firmer ground on which the judgment of the learned judge may be upheld. This is a case where the respondent was deprived of his property otherwise than in accordance with law, namely, the requirement of the law that he should have been given an opportunity of being heard. This is in clear violation of art 13(1) of the Federal Constitution. And it has been repeatedly held by courts across the Commonwealth that compensation is payable to a person whose C constitutionally guaranteed fundamental right, such as the right to life, personal liberty or property is violated (see *Maharaj v Attorney General of Trinidad & Tobago (No 2)* [1979] AC 385; *Nilabati Bahera v State of Orissa* 1993 AIR SC 1960; *Oag v The Queen* (1985) 22 CRR 171, *Fose v Minister of Safety and Security* [1996] 2 BCLR 232, *Simpson v Attorney-General* [1994] 3 NZLR 667 and *Cullen v Chief Constable* D *of the Royal Ulster Constabulary (Northern Ireland)* [2003] 1 WLR 1763.

[5] For the reasons already given, we found ourselves in agreement with the judgment of the learned judge. The appeal was accordingly dismissed and the usual orders consequent upon a dismissal were made.

E *Appeal dismissed.*

Reported by Janani Suntharalingam

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